

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
ELKINS DIVISION**

**JENNIFER GAMMONS,**

**Plaintiff,**

**v.**

**Civil Action No.: 2:12-CV-52  
Judge Bailey**

**MICHAEL J. ASTRUE,  
Commissioner of Social Security,**

**Defendant.**

**REPORT AND RECOMMENDATION/OPINION**

On July 20, 2012, Plaintiff filed a Complaint against the Commissioner of Social Security. (ECF No. 1). In conjunction with her Complaint, Plaintiff also filed an Application to Proceed without Prepayment of Fees and Costs. (ECF No. 2). The Court, by Order dated July 23, 2012, granted Plaintiff's request to proceed *in forma pauperis*. (ECF No. 4). After the standard sixty day summons was issued (ECF No. 5), the Commissioner filed his Answer and the Administrative Record on September 27, 2012. (ECF Nos. 8 and 9). That same day, the Court filed its Order Directing Parties to Adhere to the Procedures, Deadlines and Pleading Requirements of Local Rule of Civil Procedure 9.02. (ECF. No. 11). Plaintiff's Motion for Summary Judgment and Memorandum in Support was due on October 27, 2012. On November 14, 2012, the Court filed an Order for Plaintiff to Show Cause Within Fourteen Days why the case should not be dismissed for failure to prosecute under Fed. R. Civ. P. 41(b). (ECF No. 13).

Plaintiff has not, as of this date, filed her Motion for Summary Judgment, nor has she filed any document in this matter aside from her initial Complaint and Application to Proceed Without Prepayment of Costs.

## RECOMMENDATION

For the above reasons, the undersigned respectfully **RECOMMENDS** that Plaintiff's Complaint (ECF No. 1) be **DISMISSED** without prejudice for failing to file a Motion for Summary Judgment as required by LR Civ P 9.02 and as required by the undersigned's Order, dated November 14, 2012.

Any party may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Chief Judge John Preston Bailey, United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Court directs the Clerk of the Court to provide a copy of this Report and Recommendation to any parties who appear *pro se* and all counsel of record, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

Respectfully submitted this 11<sup>th</sup> day of December, 2012.

  
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DAVID J. JOEL  
UNITED STATES MAGISTRATE JUDGE